(3)

C.F. 100/—

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IN THE HIGH COURT OF CHHATTISGARH
AT BILASPUR

W.P. No. 2532 /2005

Petitioner : Mohd. Kayum Khan,
S/o Mohd. Yunus Khan,
aged about 45 years,
R/o Imlipara, Ambikapur (C.G.)

P.R. No. 2621/05
Presented by Shri Santosh Gupta
dated 13/6/05

VERSUS

Respondents : 1. Regional Transport Authority
Chhattisgarh, Raipur (C.G.)

2. Krishna Kumar Bairagi,
S/o B. R. Bairagi
R/o Champa Jashpur (C.G.)

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA.

(61)

A.F.R.

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.2532 of 2005

Mohd. Kayum Khan

- Versus -

Regional Transport Authority, Chhattisgarh & another

POST FOR ORDER ON 5th AUGUST, 2005

Sd/-
L.C. Bhadoo
Judge

(62)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.2532 of 2005

Mohd. Kayum Khan

- Versus -

Regional Transport Authority, Chhattisgarh & another

Present: -

Mr. B.K. Rawat, Advocate	:	For the petitioner.
Mr. Sandeep Dubey, Govt. Advocate	:	For respondent No.1
Mr. Ajay Shrivastava, Advocate	:	For respondent No.2

ORDER

(Passed on 5th August, 2005)

L.C. BHADOO, J.

1. The petitioner, who is the holder of two regular stage carriage permits on the route Ambikapur to Sankh via Batoli, Sitapur, Pathalgaon, Ludeg, Kansabail, Kunkuri, Jashpurnagar, Gohling & back, has preferred this writ petition being aggrieved by the grant of temporary stage carriage permit to respondent No.2 by respondent No.1-Regional Transport Authority, Chhattisgarh, Raipur on the route Ambikapur to Sankh for the month of June, 2005.

2. Brief facts leading to filing of this writ petition are that respondent No.2 herein applied for grant of temporary stage carriage permit on the route Ambikapur to Sankh on the ground of heavy traffic on account of marriage season apart from Kabir Jayanti, Rana Pratap Jayanti & Rani Durgavati sacrifice day. The petitioner's challenge to the said grant of temporary permit is that the said temporary permit has been granted without formulation of the route by the State Government under Section 68 (3)(ca) of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act of 1988') and the application for grant of temporary permit has been filed to S.T.A., Bilaspur, whereas no such authority is functioning. Respondent No.1 vide order dated 3.6.2005 granted temporary stage carriage permit to respondent No.2 for the period 5.6.2005 to 30.6.2005 and in the said temporary permit timing for departure from Ambikapur has been

granted at 22.30 p.m., which is just 25 minutes after the regular service of the petitioner under Permit No.2118/B/05 and arrival time for Sankh has been granted at 4.00 p.m., which is just 35 minutes before the arrival time of the petitioner's service. Similarly, return timing of the petitioner is 6.00 am, whereas return timing of respondent No.2 is 5.30 am, which is 30 minutes ahead of the petitioner's regular service, the major portion of the permit is common and grant of timings to temporary permit is not in the public interest.

3. Return has been filed on behalf of respondent No.1 in which it has been mentioned that it is incorrect to say that the temporary stage carriage permit has been granted to respondent No.2 without formulation of the route under Section 68 (3)(ca), as the route from Ambikapur to Sankh has already been notified by the State Government on 14.6.2004 at Sr. No.444 vide Annexure R1-1. It has further been mentioned that the temporary permit was granted looking to the need of general public of Bageecha & Narayanpur. It has also been mentioned that out of total 212 km route, 94 km route is common in both the permits i.e. regular & temporary permits and the temporary permit granted in favour of respondent No.2 is 32 km less than the route of petitioner's permit.

4. Return has also been filed on behalf of respondent No.2.

5. Even though the period for which the temporary stage carriage permit was granted to respondent No.2 has already expired, but counsel for the petitioner submitted that the R.T.O. is not authorized to grant temporary permit without formulation of the route, therefore, the petition was kept pending for decision on merit.

6. I have heard Shri B.K. Rawat, counsel for the petitioner, Shri Sandeep Dubey, Government Advocate for respondent No.1/ State & Shri Ajay Shrivastava, counsel for respondent No.2.

7. Shri Rawat, learned counsel for the petitioner submitted that the temporary permits cannot be granted at the whims and fancy of the R.T.A. without following the procedure as

envisaged under Section 87 of the Act of 1988. He further submitted that the temporary permits cannot be granted without formulation of the route. A temporary permit is being granted always by misinterpretation of clause (c) of sub-section (1) of Section 87 of the Act of 1988.

8. On the other hand, learned counsel for the respondents submitted that it is incorrect to say that respondent No.2 was granted temporary permit without formulation of the route. It is evident from Annexure R1-1 that on 14.6.2004 the State Government had already formulated the route, which is at Sr. No.444. Counsel for the respondents further submitted that the said permit was granted to respondent No.2 in the public interest.

9. Having heard learned counsel for the parties, I have perused the record. In this connection provisions have been made under Section 87 of the Act of 1988 for grant of temporary permit which enumerates that:

> "A Regional Transport Authority and the State Transport Authority may without following the procedure laid down in Section 80, grant permits, to be effective for a limited period which shall, not in any case exceed four months, to authorize to use of a transport vehicle temporarily -
>
> a. for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings, or
> b. for the purpose of a seasonal business, or
> c. to meet a particular temporary need, or
> d. pending decision on application for the renewal of a permit, and may attach to any such permit such condition as it may think fit:"

Sub-section (2) of the above section further envisages that:

"Notwithstanding anything contained in sub-section (1), a temporary permit may be granted thereunder in respect of any route or area where-

(i) no permit could be issued under Section 72 or Section 74 or Section 76 or Section 79 in respect of that route or area by reason of an order of a Court or other competent authority restraining the issue of the same, for a period not exceeding the period for which the issue of the permit has been so restrained; or

(ii) as a result of the suspension by a Court or other competent authority of the permit of any vehicle in respect of that route or area, there is no transport vehicle of the same class with a valid permit in respect of that route or area, or there is no adequate number of such vehicles in respect of that route or area, for a period not exceeding the period of such suspension:

Provided that number of transport vehicles in respect of which temporary permits are so granted shall not exceed the number of vehicles in respect of which the issue of the permits have been restrained or, as the case may be, the permits has been suspended.

10. Therefore, the provisions of sub-section (1) of Section 87 of the Act of 1988 enumerates four contingencies under which the R.T.O. or S.T.A. has been authorized to grant temporary permits not exceeding for a period of four months without following the procedure under Section 80 of the Act of 1988. Sub-section (2) further enumerates the circumstances under which the temporary permits can be granted i.e. where on account of a Court or competent authority order permit cannot be granted under Section 72 or Section 74 or Section 76 or Section 79 and also where a Court or other competent authority suspended the permit of a transporter.

11. Now coming to the question as to whether a temporar permit can be granted on a route, which has not bee formulated by the State Government under Section 68 (3) (ca of the Act of 1988. In this connection, under Section 2 (31) c the Act '*permit*' has been defined that means:

> '*a permit issued by a State or Regional Transport Authority or an authority prescribed in this behalf under this Act authorizing the use of a motor vehicle as a transport vehicle.*'

Under Section 68 (3)(ca) the Government has been authorize to formulate the routes for plying stage carriages. Section 7 (1) prescribes the filing of an application for a permit in respec of stage carriage or as a reserve stage carriage. The procedur regarding consideration of application for stage carriage perm has been laid down under Section 71, which envisages that:

> "a *Regional Transport Authority shall, while considering an application for a stage carriage permit, have regard to the objects of this Act and Regional Transport Authority shall refuse to grant a stage carriage permit if it appears from any time-table furnished that the provisions of this Act relating to the speed at which vehicles may be driven are likely to be contravened;*
>
> *Provided that before such refusal an opportunity shall be given to the applicant to amend the time-table so as to conform to the said provisions."*

Section 72 envisages that:

> "*Subject to provisions of Section 71, a Regional Transport Authority may, on an application made to it under Section 70, grant a stage carriage permit in accordance with the application or with such modifications as it deems fit or refuse to grant such permit:*
>
> *Provided that no such permit shall be granted in respect of any route or area not specified in the application."*

Sections 73 & 74 deals with the grant of contract carriage permit. Section 80 lays down the procedure in applying for and granting permits. Sub-section (2) of Section 80 provides that "*A Regional Transport Authority (State Transport Authority or any prescribed authority referred to in sub-section (1) of Section 66) shall not ordinarily refuse to grant an application for permit of any kind made at any time under this Act.*" Section 87 provides for temporary permits in which it has been provided that a Regional Transport Authority and the State Transport Authority may without following the procedure laid down under Section 80, grant permits, to be effective for a limited period which shall, not in any case exceed four months, to authorize the use of a transport vehicle temporarily on the conditions provided under clauses (a) to (d). Sub-section (2) further provides the conditions under which a temporary permit can be granted. Therefore, a reading of above provisions makes it clear that the Legislature has not made any difference between the temporary permit and regular permit, the only difference between the two is that a regular permit is to be granted for a period up to five years, whereas, a temporary permit can be granted for a maximum period of four months. In addition to that, a temporary permit can be granted to meet the contingencies provided under Section 87, as Section 87 has been enacted in order to meet the emergent situations where regular permit cannot be granted for any reason. However, the R.T.A. & S.T.A. is required to grant temporary permit only after satisfying the conditions enumerated under Section 87 of the Act of 1988. The temporary permit can be granted even without following the procedure laid down under Section 80 and the Legislature has deliberately not incorporated that RTA & STA can grant temporary permit dispensing with the provisions of Section 68 (3)(ca) i.e. the Government to formulate the route for plying the stage carriages. Therefore, looking to the above provisions when to meet the emergent situations the provisions of Section 87 has provided for grant of temporary permit, the STA & RTA cannot grant a temporary permit where the route has not been formulated under Section 68 (3) (ca), however to meet the other situations the RTA is entitled to grant contract

carriage permit. But, in the present case the temporary permit was granted on a route, which was already formulated by the State Government.

12. Now coming to the question, as argued by learned counsel for the petitioner, that R.T.A. by misusing the provisions is granting temporary permits with the impunity without following the provisions of Section 87 of the Act of 1988 on the route where regular permits are already there and regular buses are running and thereby causing losses to the regular permit holders.

13. In this situation, it can be said that the Legislature has entrusted power to R.T.A. and S.T.A. to grant temporary permits in accordance with the provisions of Section 87 of the Act of 1988 and therefore, these authorities are required to act according to the provisions of Section 87 and they should grant temporary permits only to meet the temporary need and contingencies as enumerated under Section 87 of the Act of 1988, in this connection the Hon'ble Apex Court in the matter of **M/s Basant Roadways Vs. State Transport Appellate Tribunal and others** reported in **AIR 1987 Supreme Court 116** observed that:

> "We, however, deprecate the practice of granting of temporary permits repeatedly to ply stage carriages for short periods even when it is made out that there is a grave need for increasing the number of regular services on the routes in question in the public interest. In many cases this practice has led to undesirable results. In all such cases the proper action to be taken by the Regional Transport Authorities is to grant regular permits in accordance with law either by inviting applications for grant of permits or on the applications made by the intending operators suo motu under Sec. 57(2) of the Motor Vehicles Act, 1939. We hope that the Regional Transport Authorities will take necessary steps in accordance

with law in respect of all the routes to alleviate the suffering of the travelling public."

14. Therefore, where the S.T.A. or R.T.A. feels that existing permits are not sufficient to meet the requirements of general public then they can take steps in accordance with the provisions of the Act of 1988 to meet the requirements of general public, however, they should desist from granting temporary permits repeatedly in a fashion making the temporary permits as regular permits and at the same time they should also consider the fact that where already sufficient number of permits are there and number of vehicles are operating to meet the requirements of general public then they should not grant temporary permits against the provision of Clause (d) of sub-section (1) of Section 67 of the Act of 1988 which enumerates that "*the desirability of preventing uneconomic competition among holders of permit.*" So, the uneconomic competition should also not be created and even then, if the R.T.A. & S.T.A. are granting permits which are contrary to the provisions of Section 87 of the Act of 1988 and above direction of the Hon'ble Apex Court, any person feeling aggrieved by the action of RTA or STA can approach the appropriate Forum for redressal of his grievances. Under the new Act the provisions of Sections 47 & 57 were amended and now under the provisions of Section 80 of the Act of 1988 the RTA & STA are authorized to grant permits liberally, the said provision has been made in order to obviate the problems of general public, to make the transport business more competitive and to provide better transport services to the general public and as has been held by the Hon'ble Apex Court in the matter of **Mithilesh Garg etc. etc. Vs. Union of India and others etc. etc.** reported in **AIR 1992 Supreme Court 443** that the paramount consideration while granting permits is the convenience of the general public and that should be taken as paramount consideration while granting permits. Even under Section 87 of the Act of 1988 a temporary permit can be granted without following the procedure under Section 80 of the Act and in this connection, no hard and fast guidelines can be issued, if any person is aggrieved by grant of temporary permit under Section 87 on the ground that permit

has been granted without satisfying the requirements of Section 87, then he can challenge the grant of said permit and then & then only that can be examined on its own merit. However, it is made clear that since the function of RTA & STA are quasi-judicial therefore, while granting temporary permits the RTA/ STA is required to pass an order assigning the reasons for grant of temporary permit without which it cannot be said that RTA has granted temporary permit after applying its mind to the ground situation and also considered the provisions of Section 87 of the Act.

15. As far as the present case is concerned, it has already been mentioned above that route has already been formulated and under that temporary permit was granted to respondent No.2 for a period of one month, which has already been expired.

16. In the result, the petition is disposed of with following observations / directions that the RTA / STA:

a. can grant temporary permit under Section 87 of the Act of 1988 only when the requirements of Section 87 are satisfied.

b. while granting temporary permit, the RTA & STA has to assign reasons for grant of temporary permit satisfying the requirements of Section 87 of the Act of 1988.

c. the RTA/STA while granting temporary permit has to take into consideration the observations of the Hon'ble Apex Court in the matter of **M/s Basant Roadways** (Supra) and they cannot grant temporary permit repeatedly or extend the temporary permit beyond four months.

d. the RTA & STA can grant the temporary permit only on the route formulated by the State Government under Section 68(3)(ca) of the Act of 1988.

Sd/-
L.C. Bhadoo
Judge

Roshan/-